IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/01/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

SECOND APPEAL NO.1888 OF 1991

Jagannathan ... Appellant

-Vs-

Ramayee ... Respondent

Second Appeal preferred under Section 100 of the Code of Civil Procedure for the relief as stated therein.

!For appellant : Ms.G.Mirula Roshini for
Mr.T.Dhanyakumar
^For respondent : No Appearance

:JUDGMENT

This Second Appeal is directed against the judgment and decree dated 4.9.1991 rendered in A.S.No.5 of 1991 by the Court of Principal Subordinate Judge, Coimbatore, thereby confirming the judgment and decree dated 28-03-1990 rendered in O.S.No.1250 of 1989 by the Court of I Additional District Munsif, Coimbatore.

2. Tracing the history of the case, it comes to be known that the appellant herein has filed the suit in O.S.No.1250 of 1989 on the file of the Court of I Additional District Munsif, Coimbatore, against the respondent herein praying for declaration that the defendant is not the legally wedded wife and consequently, she is not entitled to claim any maintenance against the plaintiff.

3. In the plaint filed before the trial Court, the appellant would submit that the plaintiff married one Bakkiam in the year 1976 and she is the legally wedded wife; that the defendant was residing in Sokkampudur and the plaintiff used to talk to her often; that the plaintiff was forced to sign on an agreement to marry the defendant and it was executed on 23.4.1976 and the same was also registered; that repudiating the agreement, on 24.4.1976 itself he sent a notice to the defendant, but there was no reply; that on 23.4.1976 the defendant sent a notice to the plaintiff claiming maintenance on the ground that she was married to him and a child was born out of their wedlock; that the plaintiff sent a reply denying the marriage and paternity of her son; that the defendant filed a petition under Section 125 of the Cr.P.C.

for maintenance before the Court of I Cl ass Magistrate, Coimbatore and the said petition was allowed and further appeals against the same before higher forums were dismissed.

4. The plaintiff would further submit that he never married the defendant and did not live with her even for a day, but the criminal court awarded maintenance on the ground that the defendant is his wife; that the document dated 23.4.1976 is only an agreement to marry and nothing was done pursuant to the said agreement; that in fact, he has sent a notice on the very next day of the said agreement to the defendant, the receipt of which was acknowledged by her, but she had not chosen to send any reply nor had taken any step to have the proposed marriage solemnised, pursuant to the said agreement; that the plaintiff was not aware of the whereabouts of the defendant thereafter; that after a lapse of nearly nine years, the defendant has chosen to make the claim on the basis of an agreement made on 23.4.1976; that even in the notice sent by her on 15.11.1984, the defendant did not specify the details of marriage, which shows the falsity of her claim; that according to defendant, a child was born to her through the plaintiff on 24.4.1976, while according to her the agreement of marriage came into being on 23.4.1976 and that this statement shows her claim of marital status as false and hence, would pray for the relief extracted supra.

5. The defendant would stiffly oppose the claim of the plaintiff by filing her written statement wherein besides generally denying the allegations of the plaint, she would further submit that the defendant and her son have been granted maintenance by the Judicial First Class Magistrate accepting the legal status of this defendant as wife of the plaintiff, in M.C.No.30 of 1985; that having aggrieved, the plaintiff took the matter to the District Court, Coimbatore in Criminal Revision Petition No.38 of 1987, which on dismissal, the plaintiff filed a revision before the High Court, Madras in Crimimal Miscellaneous Petition; that the matter was disposed of rejecting the claim of the plaintiff and affirming the legal status between the parties, thus, the matter has become final and binding between the parties; that in view of the said decision, the plaintiff cannot now file the suit claiming relief for mere declaration without seeking to set aside the earlier judgment and the suit is not maintainable; that the relief claimed by the plaintiff is therefore vague and speculative and not maintainable in law.

6. The defendant would further submit that the facts of the case is that the plaintiff and defendant were originally lovers and subsequently, they got married and evidencing the same, the agreement dated 23-4-1976 was executed by them; that the marriage was also performed on the same day between them at Dharmaraja Koil at Coimbatore in the presence of invitees consisting of frien ds and relatives; that after their marriage, they were living together in the house of the plaintiff; that of their wedlock, a child was born to the defendant on 24-11 -1976, which fact was informed to the local authority by the plaintiff himself; that till 1984, the plaintiff and the defendant were living together happily and thereafter, the plaintiff changed his ways and manners and married one Bagyam in the year 1984; that when the conduct of the plaintiff was questioned, she was driven away from the matrimonial home with her child and thereafter she is under the care and

custody of her parents; that since the defendant was deserted, she preferred the claim for maintenance for herself and her child; that the trial Court, after conducting full trial, found that the defendant is the legally wedded wife and awarded maintenance and hence, would pray to dismiss the suit with costs.

7. Based on the above pleadings by parties, the trial court would frame the issues as follows:-

1. Whether the plaintiff is entitled for the relief of declaration as sought for?
2.Whether the plaintiff is entitled for the relief of permanent injunction as sought for?
3. What relief, if any, the plaintiff is entitled to?

Thereafter, the trial court would conduct the trial wherein the plaintiff would examine himself as P.W.1 and would examine one chinnakannu as P.W.2 and would mark 10 documents as Exs.A.1 to A.10. On behalf of the defendant, she would examine herself as D.W.1 and would examine three others as D.Ws.2 to 4 for documentary evidence and would mark 8 documents for documentary evidence as Exs.B1 to B8.

8. On the above evidence placed on record and upon hearing both parties, the trial Court would ultimately dismiss the suit. Aggrieved, the appellant herein has preferred an appeal in A.S.No.1250 of 1989 before the Court of Principal Subordinate Judge, Coimbatore and the same also having been dismissed, thereby confirming the judgment and decree of the trial Court, the plaintiff before the trial Court has come forward to prefer the above second appeal and this Court has admitted the same for determination of the following substantial question of law:-

"Whether Ex.A.3 per se establishes a valid marriage between the plaintiff and the defendant?"

9. During arguments, the learned counsel for the appellant, in the absence of any representation for the respondent, would only reiterate the facts and circumstances of the case as projected by the respective parties and the prayer, the plaintiff disputing Ex.A.3 so-called marriage agreement entered into between the parties with no new fact or circumstance having been brought forth nor any law argued and therefore this Court is left with no choice but to decide the sole substantial question of law pertaining to Ex.A.3 and its validity so as to decide the above second appeal based on the decision arrived at for the substantial question of law.

10. A perusal of the materials placed on record particularly the judgments of the trial Court and the first appellate Court would reveal that the trial Court has traced the facts and circumstances of the case without missing even the minutest point pleaded and having framed three issues as extracted above, and permitting the parties to record the evidence, during which the plaintiff, besides examining himself as P.W.1 would examine yet another witness on his side as P.W.2 for oral evidence and on the part of the

defendant, she would examine herself as D.W.1 besides examining three more witnesses as D.Ws.2 to 4. So far as the documentary evidence is concerned, the plaintiff would submit ten documents as Exs.A.1 to A.10 and the same by the respondent is eight documents as Exs.B.1 to B.8, out of which it is Ex.A.3 dated 23.4.1976 which is an agreement entered into in between the plaintiff and the defendant pertaining to their marriage and this document is in the form of a registration copy.

11. A careful study held into Ex.A.3 would show that though the document has been captioned and termed as a marriage agreement, the recitals therein only denote the very marriage held on that particular date that was on 23.4.1976 in between the plaintiff and the defendant both signing the document in the presence of witnesses. Therefore, easy conclusions could be drawn that it is not the caption or the title that is given to the document which is relevant but the intention of parties and the object sought to be achieved are the hallmarks of reducing into writing of such document as it has been held in many judgments time and again by the upper forums of law and therefore the Court cannot be carried away by the title or caption given to the document or the heading given therein.

12. Anyone looking into the document, Ex.A.3, cannot arrive at the conclusion that it is a mere agreement for marriage as though the marriage has not been fructified whereas all those recitals therein only indicate that with the intention of getting married that day, parties have not only got married but also reduced the same into writing but terming the marriage as an agreement in between them. Recitals such as that the plaintiff and the defendant should not get away from each other till the last, that the plaintiff should provide with all facilities and take care of the defendant throughout her lifetime and that the defendant should also take care of the plaintiff as a dutiful wife further specifying after begetting the children how they should behave etc. which are seen in Ex.A.3 which cannot be reduced into a mere agreement and therefore in pith and substance they are only the marriage recitals and hence Ex.A.3 is only the document indicating the marriage held that day before the Registrar and nothing else.

13. Moreover, evidence is also made available to the effect that not only with execution of Ex.A.3 but thereafter the parties with their friends and relatives have gone to the Dharmaraja temple at Coimbatore on the same day and the marriage rituals have been performed systematically in their presence which also comes to be seen from the evidence adduced on the part of the defence witnesses and the entries effected for the child born out of the lawful wedlock on 24.11.1976 would all go to show that a pucca marriage had been performed in accordance with the rituals and the law creating irrevocable marital bondage in between the plaintiff and the defendant besides the said marriage having consumated resulting in the birth of the child. Therefore, there is no wonder that both the lower Courts have concurrently arrived at the conclusion to hold that the plaintiff and the defendant are husband and wife so as to grant the maintenance in favour of the defendant in the circumstances of the case wherein it is found that the plaintiff has forsaken the defendant and her child of late and has gone in for a second marriage as it comes to be established in the evidence of D.W.1.

14. For these reasons, the only conclusion that could be arrived at by this Court is to answer the substantial question of law in favour of the respondent and against the appellant thereby declaring that Ex.A.3 per se establishes only a valid marriage between the plaintiff and the defendant besides the other rituals having systematically been gone through in Dharmarajar temple, Coimbatore as it comes to be revealed in evidence. Therefore, this Court does not find any valid or tangible reason to cause its interference into the concurrent findings arrived at by both the Courts below and hence the following judgment:

In result,

(i)the above second appeal does not merit acceptance and becomes only liable to be dismissed and is dismissed with costs throughout.

(ii)The judgment and decree dated 4.9.1991 rendered in A.S.No.5 of 19 91 by the Court of Principal Subordinate Judge, Coimbatore thereby confirming the judgment and decree dated 28.3.1990 rendered in O.S.No.1 250 of 1989 by the Court of I Additional District Munsif, Coimbatore is hereby confirmed.

Index: Yes
Internet: Yes

paa/Rao

To
1.The Principal Subordinate Judge,
Coimbatore.

2.The I Additional District Munsif,
Coimbatore.

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